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2010 MAR -8 AM 10: 22

BEFORE THE FEDERAL ELECTION COMMISSION

3 In the Matter of )

4 CELA )

5 MUR 6226 )

6 )

7 JOHN GARAMENDI )

8 GARAMENDI FOR CONGRESS, AND )

9 BETTY ANN DOWNING, IN HER )

10 OFFICIAL CAPACITY AS TREASURER )

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GENERAL COUNSEL'S REPORT

14 Under the Enforcement Priority System, matters that are low-rated

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16 are forwarded to the Commission with a recommendation for dismissal. The

17 Commission has determined that pursuing low-rated matters, compared to other higher-

18 rated matters on the Enforcement docket, warrants the exercise of its prosecutorial

19 discretion to dismiss these cases. The Office of the General Counsel scored MUR 6226

20 as a low-rated matter.

21 In this matter the complainant, Charles H. Bell, Jr., alleges that candidate John

22 Garamendi and Garamendi for Congress, and Betty Ann Downing, in her official

23 capacity as treasurer (collectively the "Committee"), violated the "Stand by Your Ad"

24 requirements under 11 C.F.R. § 110.11(c)(3)(ii) and (iii). These provisions require an

25 audio statement by the candidate that identifies the candidate and that he or she approves

26 the message accompanied by either an "unobscured, full-screen view" of the candidate or

27 a picture of the candidate that is at least 80% of the screen height, as well as a similar

28 statement that must appear clearly in writing at the end of the television communication.

29 See 11 C.F.R. § 110.11(c)(3)(ii) and (iii). The complaint specifically alleges that the

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1 Committee's advertisement does not conform to these requirements because it did not  
2 include a written statement that candidate Garamendi approved the advertisement at the  
3 end of the television communication.

4 The Committee responded by noting that the advertisement contains an oral  
5 "stand by your ad" disclaimer and includes the written statements "Garamendi for  
6 Congress" and "Paid for by Garamendi for Congress." Thus, the Committee claims that  
7 it has substantially complied with the requirements of 11 C.F.R. § 110.11(c)(3)(ii) and  
8 (iii). Moreover, the advertisement's other verbal and written disclaimers provided ample  
9 information to voters so there would be no confusion as to who paid for the  
10 advertisement.

11 In light of the technical nature of the alleged violation, along with the probability  
12 that potential voters were not misled by the advertisement, and in furtherance of the  
13 Commission's priorities and resources, relative to other matters pending on the  
14 Enforcement docket, the Office of General Counsel believes that the Commission should  
15 exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470  
16 U.S. 821 (1985). Additionally, this Office intends on reminding John Garamendi,  
17 Garamendi for Congress, and Betty Ann Downing, in her official capacity as treasurer, of  
18 the obligation to place the written disclaimer at the end of the advertisement pursuant to  
19 11 C.F.R. § 110.11(c)(3)(iii).

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**RECOMMENDATION**

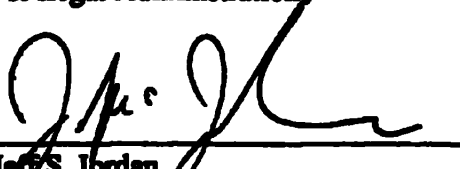
The Office of General Counsel recommends that the Commission dismiss MUR 6226, close the file, and approve the appropriate letters. Additionally, this Office recommends reminding John Garamendi, Garamendi for Congress, and Betty Ann Downing, in her official capacity as treasurer, of the obligation to place the written disclaimer at the end of the advertisement pursuant to 11 C.F.R. § 110.11(c)(3)(iii).

Thomasenia P. Duncan  
General Counsel

3/5/10  
Date

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